

REMARKS

The present Amendment is responsive to the Office Action mailed June 29, 2006.

Claims 1, 6-9, 17, 21, 26-27, 29, 34-37, 41, 43, 47, 52-55, 63, 67, 72-73 and 75-77 were rejected as being unpatentable over Lipin. Reconsideration and withdrawal of these rejections are respectively requested.

The outstanding Office Action stated: "Lipin's merchant's providing of the link to the affiliate plan is an act of requesting information and when the potential affiliate clicks the link top join, the merchant receives information. This defines the profile of the potential affiliate as "someone who wants to join an affiliate program" (if a potential affiliate wants to join an affiliate program to market a merchant's products, this inherently signifies affiliate marketing information). Based on this profile, the merchant may expose compensation plans to the potential affiliate."

To distinguish the claimed embodiments from the Examiner's interpretation of Lipin, independent claims 1 and 47 have been amended to recite:

defining a plurality of different compensation plans;

receiving an application from a potential affiliate, the received application including sales and marketing information of the potential affiliate;

evaluating the received application and defining a profile of the potential affiliate based upon the sales and marketing information in the received application;

requesting and receiving information from the affiliate to enable the merchant to define a profile of the affiliate;

selecting which of the plurality of different compensation plans to expose to the potential affiliate based upon the defined profile of the potential affiliate;

exposing the selected ones of the plurality of compensation plans to the potential affiliate, the exposed compensation plans being tailored to at least one of the potential affiliate and a product or service offered by the merchant;

accepting a selection by the potential affiliate of at least one of the exposed compensation plans, the potential affiliate then becoming an affiliate, and

measuring traffic to the merchant Web site that originates from the affiliate Web site and applying the measured traffic to the at least one compensation plan selected by the affiliate to determine the compensation due to the affiliate.

Therefore, claims 1 and 47 define a step of receiving an application from a potential affiliate that includes sales and marketing information. Such a recitation distinguishes the claimed embodiments from the Examiner's interpretation that merely providing a link to the affiliate is an act of requesting information that inherently includes marketing information "(if a potential affiliate wants to join an affiliate program to market a merchant's products, this inherently signifies affiliate marketing information)." Lipin demonstrably does not teach or suggest any step of receiving an application from a potential affiliate, the application including sales and marketing information, nor does Lipin teach or suggest any step of evaluating a received application from a potential affiliate, as recited in the amended claims.

It is also worthy of note that the claimed embodiments now require that the defined profile be based upon an evaluation of the received application from the potential affiliate, which received application is recited to sales and marketing information of the potential affiliate. Claims 1 and 47 then recite "selecting which of the plurality of different compensation plans to expose to the potential affiliate based upon the defined profile of the affiliate." Therefore, the embodiments defined by claims 1 and 47 require that the selection of the compensation plans be carried out "based upon the defined profile" of the potential affiliate, which profile is based upon the sales and marketing information provided by the potential affiliate in the received application, as claimed. Claims 1 and 47, as amended, also require that the merchant expose selected ones (note plural form) for the potential affiliate to accept. Not only does Lipin not teach or suggest receiving

any application from a potential affiliate (and much less an application that includes sales and marketing information), but Lipin does not teach or suggest exposing more than one compensation plan from which to choose (as previously acknowledged by the Office), whether or not such (plural) compensation plans are selected based upon a profile of the potential affiliate.

As amended, independent claim 29 recites:

providing the merchant Web site with sales and marketing information requested by the merchant Web site to enable the merchant to define a profile of the affiliate;

reviewing a plurality of different compensation plans exposed to the affiliate at the merchant Web site, the exposed plurality of different compensation plans being tailored to the affiliate based upon the sales and marketing information provided by the affiliate to the merchant and the defined profile and selecting at least one of the plurality of compensation plans, each of the compensation plans having a link to the merchant Web site associated therewith;

As with claims 1 and 47, claim 29 requires that the affiliate provide the merchant with sales and marketing information so as to enable the merchant to define a profile of the affiliate based upon the provided sales and marketing information. Claim 29, as amended, also requires that the exposed plurality of different compensation plans be “tailored to the affiliate based upon the sales and marketing information provided by the affiliate to the merchant and the defined profile.” Therefore, claim 29 distinguishes over Lipin (and the Examiner’s interpretation of Lipin, disputed herein) in which the mere act of an affiliate clicking a link provided by the merchant constitutes marketing information that is used to define a profile. Merely clicking on a link cannot be analogized (even under the most expansive interpretation) to providing sales and marketing information. It is respectfully submitted, therefore, that claim 29 defines a method that is neither taught nor suggested by Lipin.

Turning now to the text of the outstanding rejections, Applicant’s representative notes the following:

The Office states that “Lipin teaches a method and system involving the defining of a plurality of compensation plans (a system with multiple merchants will involve a plurality of plans) (Paragraph 0027).” However, Lipin teaches that “each merchant site 52 establishes its own revenue program for affiliate sites 54”, then goes on to give examples of how different merchants have their own single revenue program. Neither paragraph 0027 of Lipin, nor the remainder of the document teach or suggest a single merchant establishing a plurality of compensation plans. In Lipin, each merchant is taught to establish a single revenue plan for its affiliates. It is respectfully submitted that paragraph 0027 neither teaches nor suggests that a single merchant establishes multiple revenue programs.

The Office next states that Lipin teaches “the exposing of at least one selected compensation plan of the plurality to the affiliate (Paragraph 0033, Sentence 8).” However, the claims require:

exposing the selected ones of the plurality of compensation plans to the potential affiliate, the exposed compensation plans being tailored to at least one of the potential affiliate and a product or service offered by the merchant

The claims require that “selected ones of the plurality of compensation plans be exposed to the potential affiliate”, and not merely “at least one selected compensation plan”, as stated in the outstanding Office Action. Therefore, that Lipin may or may not expose a single compensation plan to the affiliate or potential affiliate does not constitute probative evidence of a teaching or suggestion of exposing selected ones of the plurality of compensation plans to the affiliate, as required by claims 1 and 47.

The Office also states that Lipin teaches “an affiliate being able to review a plurality of compensation plans exposed to the affiliate at a 3rd party site (Paragraph 0033, Sentence 8).” However, paragraph 0033, sentence 8 states the following:

In addition, members of an affiliate program can login using a link 76 (Fig. 6) to view the details of affiliate programs run by other merchants.”

It is respectfully submitted that this passage does not teach or suggest a plurality of compensation plans at a 3rd party site. Indeed, there is no objective teaching or suggestion in this passage or anywhere else in Lipin that an affiliate or potential affiliate may login to some single 3rd party site and view a plurality of exposed compensation plans. Throughout Lipin, each merchant is described as having a single compensation plan (see paragraph 0027), and there is no suggestion that any merchant maintains or exposes more than one compensation plan. In fact, paragraph 0027 unambiguously states that each merchant has and exposes a single compensation plan, and that these single compensation plans across merchants may be mutually different. There is not teaching or suggestion in Lipin of a single merchant exposing more than one compensation plan to its affiliates or potential affiliates. The Office is respectfully reminded that a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). In the present case, the Lipin reference clearly leads away from the claimed embodiments, because Lipin teaches an approach to affiliate compensation in which only a single compensation plan is offered by any single merchant to its affiliates or potential affiliates. It is only in the present application that selected ones of a plurality of compensation plans are exposed to potential affiliates, such plans being based upon a profile that includes affiliate-provided sales and marketing information. Lipin simply does not teach or suggest any such steps or functionality.

Applicants believe that this application is now in condition for allowance. If any unresolved issues remain, please contact the undersigned attorney of record at the telephone number indicated below and whatever is necessary to resolve such issues will be done at once.

Respectfully submitted,

Date: October 30, 2006

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